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THE CODIFIED STATUTES ON PRIVATE INTERNATIONAL LAW OF THE EAST EUROPEAN COUNTRIES: A COMPARATIVE STUDY

Ivan Sipkov

1986

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I. Introduction

The present study is a comparative survey of the legal systems of the East European states in regard to their private international law as reflected in their codified statutes. There is, however, a need here to clarify the term "legal systems of the East European states." During the last years of World War II and the years immediately following this event, the Communists seized political power in the East European countries of Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, and Yugoslavia. These states undertook profound changes in their economic, social, and political structures, and the introduction of legal systems patterned after that of the Soviet Union. It is to be pointed out here that although patterned after the Soviet legal system, the legal orders of these countries developed unique differences during the course of the following years. In fact, today the various legal systems of these socialist republics are clearly distinguishable; however, one common feature has remained paramount: these states are ruled by a Communist party to the exclusion of other parties. As a result, the legal systems primarily serve the interests and policies of the ruling class, the Communist party. 1/ The Communist leadership holds a monopoly of power and seeks to direct and control all political, economic, social, and cultural activities. As a result, the socialist

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1/ I. Sipkov, "United States Research of the Law of the Communist-Ruled States of Europe, 16 Vanderbilt Journal of Transnational Law 583-599 (1983); G.E. Glos, Czechoslovak Private International Law 2 (Washington, D.C., Law Library, Library of Congress, 1983).

legal order requires behavior consistent with the statutes and other acts which embody the directives of the Communist party and, "the courts must follow the Party's orders and act in accordance with the policy of the government." 2/

As a consequence of these political realities, this study is limited to the legal systems of those European states which are ruled by a Communist party to the exclusion of other parties.

It must be emphasized here that what happened to the entire legal order of these states is also true in regard to the development and status of the science of private international law for "the norms of conflict of laws as a part of the legal order protect the interests of the ruling class, in this case the Communist Party, which manifests its will through the application of these norms." 3/

II. The Science of Private International Law

The East European countries made efforts to develop a new science of private international law after they were transformed into people's democracies. They faced the task of solving the problems of conflicts of laws on the basis of the principles of socialist ownership of the means of production and of the doctrines of Marxism-Leninism in line with the legal theories and practice of the Soviet Union. To a large extent, Soviet laws served as a model for the legislation of the new

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2/ D. Lasok, "Polish Family Law (Part V: Private International Law)," 16 Law in Eastern Europe 237 (1968).

3/ Supra note 1, Glos, at 2.

socialist states which accepted the features of the Soviet Union's domestic and foreign policy, as reflected in Soviet private international law. 4/ The more extremist of these countries declared the legislation and legal literature of their pre-socialist period to be obsolete and no longer acceptable. For instance, in Bulgaria a special law repealed the entire body of the pre-communist legal system. 5/

The definition of private international law currently prevailing among socialist scholars is as follows:

> Private international law is an independent and separate branch of law within the international sector of the municipal law of a state. It expresses the will of the ruling class in this state and is designed to regulate the civil law relations with an international element arising from the conditions of struggle or cooperation in the international arena. 6/

The position of private international law in the legal system is, however, the focal point of great controversy among legal scholars in the East European states ruled by a Communist party. 7/ The main issue is whether private international law falls within the scope of public international law; or, if it is accepted as municipal law, whether it should then be considered

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4/ K. Grzybowski, "Soviet Private Internation Law," 10 Law in Eastern Europe 36-43 (1968).

5/ Law No. 546 of November 20, 1951, IPNS No. 93.

6/ Vl. Kutikov, Mezhdunarodno chastno pravo na N.R. Bŭlgariia [Private International Law of the P.R. of Bulgaria] 66 (2d ed. Sofia, Nauka i izkustvo, 1976).

7/ I. Szászy, Private International Law in the European People's Democracies 9-5 (Budapest, Akademiai Kiado, 1964).

part of civil law. In the opinion of several socialist scholars, the private international law system in a Communist state is neither international nor private. They argue that the system is not considered international because it does not govern reciprocal legal relations between states but is restricted to those between natural and legal persons, citizens, or economic organizations, and it is not private because in a socialist society economic conditions and activities have no private character.

The current dominant opinion among East European scholars is that private international law is part of both municipal law and civil law. The question remains whether private international law, as part of municipal law, should be classified as civil law or as a separate and independent field of law. If it is, indeed, a separate field of law, does it belong to the civil law group or the state-administrative law group. Many scholars hold the opinion that private international law belongs to civil law. In addition, since nationality is one of the most important connecting factors in private international law, the regulation of a foreign citizen's legal status is not considered to constitute a part of private international law because the majority of the rules which govern the legal status of a foreigner are not of the civil law nature but belong to administrative law. Therefore, for no reason other than this, nationality falls outside the domain of private international law.

Finally, the characteristic feature of socialist private international law is that it puts less emphasis on interregional, interpersonal, and intertemporal law. These fields are considered to have no practical significance.

In summary, the socialist science of private international law is based on the following guiding elements and characteristic features:

--This law has the task to both regulate civil law relations originating from controversies or cooperation between two or more states and to promote the development of peaceful international liaisons.

--The rules of this law must reflect the fact that there are two different political-economic systems of ownership.

--The experience and achievements of the Soviet Union in the field of private international law are to be followed closely.

--The content of conflict of law rules must be defined by the state's general foreign policy objectives.

--The guiding policy principle in the East European bloc, especially in their relations among themselves, is a consolidation and harmonization of the rules of private international law both by means of adopting similar legal provisions and by way of treaties and conventions.

--The recognition of the principle of peaceful coexistence in relations with noncommunist states is to be honored.

--The Final Act of the Helsinki Conference of 1975 and the United Nations Declaration on the Economic Rights and Duties of States are to be given due consideration.

--The inclusion of new states which contribute new methods for the development of this science must be recognized along with the principles of the proletarian internationalism and Marxist interpretation of typical concepts of private international law. This recognition must be given despite the existence of different class systems.

--A further characteristic feature of the discipline of private international law as applied in the East European states is that it deals with conflict of law rules in a very broad manner, namely it covers the law of persons, family law, commercial law, labor law, copyright law, the law of bills of exchange and checks, maritime law, air law, and the law of transport as well as the law of jurisdiction and international procedural law.

III. Sources and Codification of Private International Law

The East European socialist bloc accepts the following as the primary sources of private international law:

--the domestic (municipal) law in the form of acts, decrees, and regulations;

--the multi- and bilateral international conventions and treaties; and

--international custom.

Judicial decisions, domestic customs, and usages evolved within the states are not considered as sources of private international law. With regard to the sources of this field of law there is a great uniformity within the East European region because of their similar political-economic, legal, and social structures. 8/

Provisions related to private international law are generally scattered throughout the legislation, but unification and codification of this branch of law is a universal trend which the East European socialist countries have gradually followed. Today, among the nine states in Eastern Europe, five have codified their laws of private international law and possess a comprehensive statutory systems on the subject.

Czechoslovakia was the first East European state to adopt a special law entitled Private International Law and Rules of Procedure Related Thereto which was passed on December 3, 1963, 9/ and entered into force on April 1, 1964. This Law is intended to promote international cooperation 10/ and is applicable only if an international treaty binding on the Czechoslovak Socialist Republic does not provide otherwise. 11/

8/ Supra note 4, at 44-68; and note 7, at 56-96.

9/ Law No. 97/1963, Sbírka zákonů (Sb., Collection of Laws of the Czechoslovak Socialist Republic), as amended by Law No. 158/1969, Sb. An English translation is in 4 Bulletin of Czechoslovak Law 249-266 (1963), a French translation may be found in 21 Bulletin de droit tchécoslovaque 273-290 (1963).

10/ Id. art. 1.

11/ Id. art. 2.

The earliest efforts made by Czechoslovakia to codify the principles of its private international law go back to the time immediately after the establishment of the Czechoslovak Republic in 1918 and continued to 1948 when the Ministry of Justice prepared a draft which became law on March 11, 1948. 12/ In 1950 the rules concerning jurisdiction, recognition of foreign judgments, and procedure were also consolidated in Part IV of the Civil Code of Procedure. 13/ It should be pointed out here that the legislative acts of 1948 and 1950 were enacted by the Law of 1963. In addition to the introductory and final provisions, this statute consists of two major parts. The first deals with the provisions concerning the conflict of laws and the legal status of aliens, and the second one covers international procedural law. Two additional laws related to private international law are the Law on Arbitration in International Trade and on Enforcement of Awards (December 4, 1963) 14/ and the Law on Legal Relations in International Trade (Code of International Trade, December 4, 1963). 15/ In spite of its codification, Czechoslovak private international law does not contain

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12/ Law No. 41/1948, Sb.

13/ Secs. 606-607, No. 142/1950, Sb.

14/ Law No. 98/1963, Sb., in force on April 1, 1964. English translation in 4 Bulletin of Czechoslovak Law 267-276 (1964).

15/ Law No. 101/1963, Sb., in force on April 1, 1964. English translation in 5 Bulletin of Czechoslovak Law 189-322 (1964).

exhaustive rules on the subject. It, however, does encompass the major legislation in the field, and the conflict of law rules were modified to reflect Communist ideology. 16/

Poland adopted a Code of Private International Law on November 12, 1965, 17/ and the new Code entered into force on July 1, 1966. Before this act, the whole system of Polish private international law was codified by the Act of August 2, 1926, 18/ and the supplementary Decree of January 14, 1936. 19/ Despite the profound changes wrought in the Polish social and economic structure through its transformation to a People's Democracy, the Law of 1926 survived to become the model for the 1965 statute. 20/ The new Code of Private International Law "designates the proper law for international, personal, and property relationships within the scope of civil law, family, guardianship, and labor law." 21/ The provisions of this statute do not apply in cases where a treaty to which the Polish People's Republic is a party provides otherwise. 22/

16/ Supra note 1, Glos, at 2.

17/ Dziennik Ustaw, 1965, No. 46, Ch. 290. English translation in 16 Law in Eastern Europe 290-295 (1968); French translation in 708 Droit polonais contemporain 219-295 (1968); also in M. Sośniak, Precis de droit international privé polonais 229-234 (Wroclaw, 1976).

18/ DU 1926, No. 101, Ch. 581.

19/ DU 1936, No. 3.

20/ Supra note 2, at 231.

21/ Supra note 17, art. 1 (1).

22/ Id. art. 1(2).

The Code's twelve chapters cover the following areas: general provisions, the law of persons, the form of legal transactions, limitation of claims, marriage, divorce, kinship, guardianship and curatorship, ownership and other property rights, obligations, labor relations, successions, and final provisions. In spite of its apparent comprehensiveness, however, the Code is incomplete and some specialized laws contain specific rules of private international law.

The German Democratic Republic adopted an Act Concerning the Law Applicable to International Private, Family, and Labor Relationships as well as to International Commercial Contracts on December 5, 1975, 23/ which entered into force on January 1, 1976. Similar to the Polish code, this Act covers the relations of international character in the areas of civil, family, and labor law, as well as the law of international trade. It is also similar to the Polish code in that its rules are inapplicable if treaties binding upon the German Democratic Republic provide alternatives. 24

Hungary recently codified its private international law through Decree No. 13 of the Presidential Council of the Hungarian People's Republic: The International Private Law, adopted on May 31, 1979. 25/ It has been in force since July 1,

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23/ Gesetzblatt der Deutschen Demokratischen Republik, Teil I, No. 46, December 8, 1975. English translation in 25 American Journal of Comparative Law 354 (1977).

24/ Id. art 2(2).

25/ Magyar Közlöny, May 31, 1979, p. 457. English translation in 55 Tulane Law Review 88-113 (1980).

1979. This first Hungarian regulation on the subject is divided into eleven chapters, and each provides conflict of law rules on a major subject. The codification went through several stages. The first drafts were promulgated in 1948, and the final text was published in 1979.

The Hungarian code is considered an instrument for "the advancement of peaceful international relationships by resolving which state law must be applied, when laws of several states may be applicable...which jurisdictional and procedural rules must be followed in a legal dispute containing a foreign element." 26/ Like the Czechoslovak, East German, and Polish codes, the Hungarian Law states that its rules shall not apply to any question governed by an international treaty. 27/ It covers general rules, persons, law of intellectual property, the law of property, law of obligations, inheritance law, family law, labor law, jurisdiction, procedural law provisions, recognition and enforcement of foreign judgments, and concluding provisions.

As recently as July 15, 1982, 28/ Yugoslavia passed a special law titled Act Concerning the Resolution of Conflicts of Laws with the Provisions of Other Countries in Certain Matters. It entered into force on January 1, 1983. This Act codified both the Yugoslav private international law and international

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26/ Id. art. 1.

27/ Id. art. 2.

28/ Službeni List SFRJ, No. 43, July 23, 1982: 1068-1079. English translation in 30 Netherlands International Law Review 222 (1983).

procedural law in a comprehensive manner and repealed a number of previous legislative acts along with various individual provisions which dealt with conflict of law rules. 29/ Its provisions are divided into six chapters: general provisions (articles 1-13); the applicable law (articles 14-45); jurisdiction and procedure (articles 46-85); recognition and execution of foreign judgments (articles 86-101); special provisions on consular representation (articles 102-106); and transitional and final provisions (articles 107-109). As is the case with the codes discussed above, the Yugoslav statute is not applicable if international treaties provide otherwise. 30/ It is very elaborate when compared with the 29-article East German law, Poland's 38-article law, the 70-article Czechoslovak law, and Hungary's code which contains 75 articles.

In the absence of codified private international law, the East European socialist countries of Albania, Bulgaria, Romania, and the USSR have their conflict of laws rules scattered throughout their legislation.

Albania, by an Act of May 17, 1945, 31/ and its enacting clause, repealed all rules of law promulgated before April 7, 1939. A few laws which were not at variance with the new

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29/ K. Sajko, Zakon o rješavanju sukoba zakona s proposima drugih zemalja u određenim odnosima [Act Concerning the Resolution of Conflicts of Laws with the Provisions of Other Countries in Certain Matters], p. v (Zagreb, Narodne novine, 1982).

30/ Id. art. 3.

31/ Supra note 7, at 56 and following.

regime and socialist legal conscience were retained. At present, the conflict of laws rules are contained in the following major codes and decrees:

--General Part of the Civil Code of April 2, 1955;

--Decree of July 25, 1956, Concerning Inventions and Rationalizations;

--Matrimonial Act No. 600 of May 5, 1948 (especially articles 23, 27, and 80-84);

--Act No. 604 of May 20, 1948, Regulating Relations Between Parents and Children;

--Act No. 602 of May 4, 1948, Governing Adoption;

--Act No. 605 of May 21, 1948, on Names and Surnames.

Bulgaria repealed all legislative acts in force before the Communist takeover of September 9, 1944, by special Law No. 546 of November 12, 1951. 32/ Previous rules for the choice of law automatically became void.

At present, provisions related to Bulgarian private international law may be found in the following acts:

--The Constitution of May 18, 1971;

--Law on the Five-Year Economic Plan of January 18, 1949;

--Law on various monopolies and nationalizations;

--Civil Procedure Code of February 8, 1952;

--Family Code of March 22, 1968, which was replaced by a new Family Code of July 1, 1985;

--Code of Maritime Shipping of January 1, 1971;

--Law on Inheritance of January 29, 1949;

32/ Supra note 6, at 106-126.

--Law on Persons and Family of August 9, 1959;

--Law on Obligations and Contracts of November 23, 1950;

--Law on Ownership of November 16, 1951;

--Copyright Law of November 16, 1951;

--Law on Foreign Trade on December 5, 1969;

--Law on Civil Air Navigation of December 1, 1972; and

--The Law on Citizens' Ownership of March 30, 1973, etc.

In Romania 33/ the basic rules for the choice of law are contained in the following laws:

--Civil Code of 1864 (arts. 2, 885, 1773, 1789);

--The Code of Civil Procedure (art. 375);

--The Code of Criminal Procedure (arts. 467, 473);

--Law on Certification of Civil Status (Decree No. 278/1960);

--Law on Romanian Citizenship (No. 24/1971);

--Law on the Legal Status of Aliens (No. 25/1969, republished on May 18, 1972);

--Decree on Checks and Legal Papers (No. 124/1934); and

--Decree-Law on Checks (No. 125/1934).

The Soviet Union's major rules of conflict of laws 34/ are found in a number of legal sources as follows:

--The Constitution;

--Fundamentals of Civil Legislation of December 8, 1961 (Part VIII, arts. 122-129);

33/ I.P. Filipesku and M. Jacotă, Drept international privat [Private International Law] (Bucureşti, Editura Didactică şi Pedagogică, 1968).

34/ Supra note 4, at 44-68.

--Fundamentals of Civil Procedure of December 9, 1961 (Part VI, arts. 59-64);

--Air Code of the USSR of May 11, 1983;

--Code of Maritime Shipping of September 17, 1968; and

--Fundamentals of Legislation Regarding Marriage and Family of June 27, 1968 (Part V, arts. 30-36).

As indicated above, the multi- and bilateral conventions dealing with problems on the subject are also sources of private international law. Of special importance are the consular conventions and bilateral international agreements on judicial assistance in civil, family, and criminal matters.

IV. Conflicts of Laws Rules

A. General rules

1. Concept of characterization

The concept of characterization or "classification" (in French "qualification") specifies the allocation of the question raised by the factual situation before the court as to its correct legal category. The object of characterization is to reveal the relevant rule for the choice of law. 35/

The problems related to characterization in private international law did not give cause for more detailed examinations and study in the legal literature of the East European socialist countries. In these people's democracies, characterization is never effected in a single act but always in several phases. If there is a single set of facts without a legal

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35/ G. Ch. Cheshire and P.M. North, Private International Law, 42 (9th ed. London, Butterworths, 1974).

character, as a rule the court first applies the characterization of lex fori (primary qualification); and after the applicable law has been determined, the characterization of the lex causae is used (second qualification).

According to the Hungarian Code, which includes specific provisions on the subject, the lex fori is not the exclusive law to be applied in characterization of a legal relation. 36/ Thus, "if, in the law suit, the characterization of the facts of the relationship is disputed, for the purposes of determining the applicable law, the rules and concepts of Hungarian law must be followed." If Hungarian law does not provide sufficient information, the rules of the appropriate foreign law governing such a legal institution should also be taken into consideration in the legal characterization. 37/ Under the Yugoslav statute, art. 9, the law of a foreign state must be applied in accordance with its meaning and notions. Thus, the Yugoslav statute regulates only the second step of characterization. The first step, even though it is not treated by the act, is subject to the lex fori. 38/

36/ G. J. Roman, "Conflict of Laws Solutions in the Hungarian New Private International Law" 10 International Journal of Legal Information 171 (1982).

37/ Art. 3 (1-2), H.

38/ P. Šarčević, "The New Yugoslav Private International Law Act," 33 The American Journal of Comparative Law 288 (1985).

2. Concept of renvoi

The doctrine of renvoi, when the court resorts to a foreign law and adopts the rules of the foreign law in regard to the conflict laws, is applied throughout the area. All five codes on private international law include special provisions on the subject.

The Hungarian code accepts renvoi primarily through the multi- and bilateral treaties to which it is a party and limits renvoi only to the remission to the Hungarian legal system (first degree renvoi). The Czechoslovak and Polish laws adopt both types, remission and transmission. For instance, a Polish court will accept remission from a foreign law to which it was directed by virtue of a Polish conflict rule. Thus, where the foreign law, designated as the proper law by this statute, refers the matter to Polish law, Polish law must be applied. 39/ And where the foreign national law designated as the proper law by this statute refers the case to another foreign law, the latter must be applied. 40/ Similarly, the Czechoslovak Code specifies that "whenever the law of a foreign country is to be applied, the provisions which refer to Czechoslovak law or to the law of a third state, remission may be accepted if it is in keeping with a reasonable and just settlement of the relations involved." 41/

39/ Art. 4 (1), P.

40/ Art. 4 (2), P.

41/ Art. 35, Cz.; see also supra note 1, Glos, at 72.

East German law is similar to Polish law. If the provisions of the East German Code refer to the law of another state, which in turn refers back to the law of the German Democratic Republic, the latter shall be applied. 42/ The Yugoslav statute provides that if reference is made to the law of a foreign state, the law of this state must be applied; and, if the foreign law refers back to the Yugoslav legislation, then the latter is to be applied. 43/ While the Czechoslovak, East German, Hungarian, Polish, and Yugoslav codes have a general solution to the problem, all the other states within the East European bloc offer a casuistic approach, that is they permit renvoi only if it is a necessity and a purposeful reference. 44/

3. Public policy

The codified statutes on private international law of the East European socialist countries contain provisions that specifically define the instances and situations where the foreign law may not be applied in these countries.

For instance, the Czechoslovak code provides that foreign legal regulations cannot be applied if the effects would be contrary to the principles of the social and governmental system of the Republic and its law. The observance of Czechoslovak law must be required without exception. 45/ Similarly, the code of the German Democratic Republic states that the

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42/ Art. 3, GDR.

43/ Art. 6, Y.

44/ Supra note 6, at 247.

45/ Art. 36, Cz.

statutes and rules of another state shall not be applied if their application is incompatible with the basic principles of the political and legal system of the Democratic Republic. 46/ The Hungarian code states that foreign law must be disregarded if it might violate Hungarian public order (Ordre Public). 47/ The law cannot be set aside merely on the grounds of socio-economic differences between the foreign state and Hungary. 48/ Foreign law, as stated in the Polish code, cannot be applied if its application would produce effects contrary to the fundamental principles of Poland's legal order. 49/ Finally, the Yugoslav statute also prohibits the application of a foreign law if the law runs "contrary to the basic principles of social organization laid down by the Constitution of the SFRY." 50/ The statute, however, also prohibits the use of a foreign law if the objective would be to evade the application of the law of the SFRY. 51/

The countries in Eastern Europe without codified private international law offer no specific regulations, but scattered provisions throughout their legislation refer to public order without explaining this term further. In the USSR, for instance, the text of article 4 of the Code of Maritime

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46/ Art. 4, GDR.

47/ Art. 7 (1), H.

48/ Art. 7 (2), H.

49/ Art. 6, P.

50/ Art. 4, Y.

51/ Art. 5, Y.

Shipping, in accordance with article 7 of the Civil Procedure Code of the RSFSR, is interpreted in the sense of restricting the application of foreign laws which contradict the Soviet regime. Article 25, paragraph 2, of the Code of Maritime Shipping and article 36 of the Basic Law on Marriage and Family are interpreted in the same manner.

Following the practice common to other legal systems, Romanian law does not define the concept of public order, and Bulgarian legislation does not offer any specific provisions on the subject. Article 89, paragraph 2, of Bulgaria's Edict on Maritime Shipping (Trade) refers to the basic principles of the regime, and article 26 of the Codex on Maritime Shipping prescribes that the foundations of the social-political regime must not be violated. Furthermore, the Code of Civil Procedure states in its article 306 that foreign judgments cannot be applied in Bulgaria if they contain regulations contrary to the laws of the People's Republic or to the principles of Bulgaria's socialist society.

4. Application of foreign law

The judicial organs and other administrative agencies in the socialist countries give extensive treatment to the ascertainment and application of foreign law. Foreign law, that is, any law which is to be applied by these countries as different from their own, is considered as "law" and not merely

"fact." The Soviet system, as well as the legal systems of some of the other socialist countries, however, does not make any such confrontation. 52/

As a rule, the judge must ascertain the contents of the foreign law, regardless of whether the parties refer to this law or not. In fact, the court is bound to find the law ex officio, and the judicial organ must make every effort to establish the foreign law. 53/ If the judge knows the foreign law, he will apply it. Some countries within the area oblige the parties to present this law themselves. The courts may also ask for an expert opinion or the assistance of the Ministry of Justice or other diplomatic or consular services. Various conventions on judicial assistance are also helpful in ascertaining the foreign law. If the contents of the foreign law cannot be ascertained after conducting these procedures and measures, then all of the socialist countries prescribe that their own law is applicable. The foreign law will not be applied in the following instances:

--if its provisions have a dispositive character;

--if it is contrary to the fundamentals of the state and social-political order, that is contrary to the ordre public; and

--if there is a "fraudulent" connection. 54/

52/ Supra note 7, at 153

53/ For instance, art. 36, Cz. and art. 13, Y.

54/ For instance, art. 8, H.

While the East German Code is silent on this conflict of law rule, the other codified statutes approach this problem in various ways. In Hungary the court ascertains the unfamiliar foreign law on its own motion. If necessary, the Hungarian courts may obtain expert testimony and may consider the proof of the foreign law submitted by the parties. 55/ If the content of the foreign law cannot be ascertained, even with the assistance of the Ministry of Justice, Hungarian law is applied. 56/ In Czechoslovakia the judicial organ must take the necessary measures to ascertain the provisions of a foreign law; it may also use the services of the Ministry of Justice. 57/ The Polish code prescribes that if it is impossible to ascertain the content of the applicable foreign law, the Polish law must be applied. 58/ The Yugoslav statute also requires that the court ascertain the content of the foreign law ex officio or request the assistance of other competent authorities. The litigants may submit a public affidavit with respect to the content of a foreign law. 59/

55/ Art. 5 (1), H.

56/ Art. 5 (2) and (3), H.

57/ Art. 53, Cz.

58/ Art. 7, P.

59/ Art. 13, Y.

In some East European countries, such as Czechoslovakia, the application of foreign law is dependent on reciprocity. 60/ The Hungarian code, on the other hand, expressly states that the application of a foreign law does not depend on reciprocity. 61/

5. Dual and uncertain citizenship

In Eastern Europe, the principal connecting factor used to determine the law to be applied in various relations involving an international element is, in the first instance, the citizenship of the person subject or party to the case. Thus, the citizenship of the individual determines his personal law and the applicable law (lex patriae). For instance, under the Polish code aliens have the same rights and duties in Poland as Polish citizens unless the law provides otherwise. 62/ Also, the Czechoslovak code specifies that aliens have the same rights and obligations in the sphere of their personal and property rights as Czechoslovak citizens unless otherwise provided. 63/ Contrarily, the codes of the socialist countries differ in the treatment accorded citizens with dual, multiple, or uncertain nationality, or stateless status.

If a Czechoslovak citizen is a dual national, then the Czechoslovak law is applied. A similar solution is prescribed in East Germany, Hungary, Poland, and Yugoslavia. Furthermore,

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60/ Art. 54, Cz.

61/ Art. 6, H.

62/ Art. 8, P.

63/ Art. 32, Cz.

if a person in Czechoslovakia holds citizenship in several countries the last one acquired governs. In East Germany and Poland the law of the state with which the person has the closest connection must be applied. In a case where an individual has multiple nationality, including East German, then the law of East Germany applies. A similar situation exists in Hungary. For instance, if a Hungarian who lives in East Germany and holds both citizenships is involved in a case, East German law applies. If the person has multiple nationality, but is not an East German citizen, then the law of the state with which he has the closest relationship applies. In Hungary and Yugoslavia, in cases where several citizenships exist but where none are Hungarian or Yugoslav, then the law of the state of the person's domicile prevails. If a person has multiple foreign permanent residences, the law of the state with which the person has his closest relationship must be applied. Under the Yugoslav statute, if the individual does not have residence in any of the states of which he is a citizen, he will be considered a citizen of the country with which he is in closest contact. Only the Hungarian code contains provisions which define the terms "domicile" and "habitual residence." 64/

If no citizenship can be ascertained or the individual is stateless, then the law of his domicile is applied in Czechoslovakia, Poland, and Yugoslavia. His habitual or ordinary residence applies in East Germany, and the law of the state where he has his residence takes precedence in Hungary. In

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64/ Art. 12, H.

Yugoslavia a stateless person who has no residence comes under the law of his dwelling place; Yugoslav law is also applied if the individual does not have a dwelling house. 65/

6. Jurisdiction

Among the codes on private international law now in force in Eastern Europe, those of Czechoslovakia, Hungary, and Yugoslavia contain specific provisions concerning the jurisdiction of courts and other authorities. The Czechoslovak code defines and emphasizes the instances where the Czechoslovak courts have exclusive jurisdiction and the kinds of cases which are excluded from their jurisdiction. This law especially provides for exclusive jurisdiction with regard to matters of property, family, legal capacity, and guardianship, matters of declaration of death, probate, and the invalidation of documents. 66/

As a rule, a Hungarian court can proceed in every case where the code does not exclude the jurisdiction of the Hungarian court or other authority. Actually, this code has three detailed categories of jurisdiction: exclusive jurisdiction of a Hungarian court, excluded jurisdiction when the Hungarian court may not proceed with a case, and stipulated jurisdiction when the parties may decide in writing as to the jurisdiction of a foreign court, internal court, or arbitration forum. 67/

65/ Arts. 12 (2); and 13, Y.

66/ Part III, arts. 37-47, Cz.

67/ Chapter IX, arts. 54-62, H.

Chapter 3 of the Yugoslav statute is devoted to the jurisdiction of the Yugoslav courts as well as that of other judicial and administrative authorities in cases involving an international element. 68/

7. Civil procedure

With the exception of the East German code on private international law, all other socialist bloc codes have special rules on international civil procedure. Czechoslovakia was the first among these states to adopt specific rules on the subject, and part II of its code is entirely devoted to these rules. Thus, the Czechoslovak code prescribes that the courts must conduct the proceedings in accordance with this country's procedural rules, and all parties have an equal status in claiming their rights. An alien may even have the capacity to sue and be sued, if he has such capacity under Czechoslovak law. 69/

Unless otherwise decreed, Hungarian law controls the procedure of a Hungarian court or other authority. It prescribes that a party's personal law controls his legal capacity including his capacity to act in a lawsuit. 70/ A non-Hungarian citizen who has limited or no capacity to act according to his personal law is considered to have the capacity to act in a procedure before a Hungarian court or other authority, provided he has the capacity to act according to Hungarian law. The

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68/ Arts. 46-85, Y.

69/ Arts. 48-49, Cz.

70/ Art. 64, H.

Code, however, covers only legal relationships in the field of civil law, family law, and labor law; it does not deal with procedural questions of taxation or financial law.

The Polish code states that a foreign party has the same legal rights as his Polish opponent. 71/ It is noteworthy that the Hungarian code only covers the main rules relating to international legal assistance. 72/ The Yugoslav statute, in sharp contrast, contains a number of detailed provisions on procedural matters. 73/

8. Recognition and enforcement of foreign judgments

Matters concerning the recognition and execution of foreign judgments and decisions 74/ are expressly regulated only in the Czechoslovak, Hungarian, and Yugoslav codes on private international law. The major requirements for the enforcement of foreign decisions may be summed up as follows: The foreign court must have jurisdiction over the case for which the courts of Czechoslovakia, Hungary, and Yugoslavia do not have exclusive jurisdiction. Also, the foreign judgment must be final, must not contradict public order policy, and must be recognized by the courts of these countries.

71/ Art. 8, P.

72/ Arts. 67-69, H.

73/ Arts. 46-101, Y.

74/ For an extensive study with a selected bibliography on the subject, see, G.J. Roman, Recognition and Enforcement of Foreign Judgments in Various Foreign Countries (Washington, D.C., Library of Congress, 1984).

In Czechoslovakia 75/ a foreign decision concerning property located in the Czechoslovak Socialist Republic may be executed if it is ordered by a Czechoslovak court. On the other hand, foreign decisions in matrimonial matters and those involving paternity, in which at least one of the parties is a Czechoslovak citizen, may be recognized in the Republic if they do not contradict the respective provisions of the Czechoslovak law. However, if all parties concerned were citizens of that country at the time of the state's decision, then they will have the same legal effect in Czechoslovakia, unless the decision is contrary to public order.

The Hungarian code 76/ gives special recognition to a judgment rendered in a divorce suit involving a Hungarian citizen domiciled abroad, in an action placing a Hungarian citizen under curatorship, or one terminating a curatorship involving in both cases a Hungarian citizen domiciled abroad. It also refers to the approval or termination of the adoption of a Hungarian citizen, if the adopting party is a foreign citizen and the adoption was approved by the Hungarian Guardianship Authority. If the judgment of a foreign court was rendered in a proceeding initiated by or against the Hungarian state and any other Hungarian authority, the judgment will be recognized if Hungary

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75/ Arts. 63-68, Cz.

76/ Chapter IV, arts. 70-74, H.

expressly waived immunity or reference is made to an international treaty of reciprocity. The judgment will be enforced only if the Hungarian state expressly waived immunity from enforcement.

The Yugoslav statute devotes chapter 4 to problems related to recognition and enforcement of foreign judgments on the basis of reciprocity. 77/

B. Rules on legal capacity

The problem of legal capacity is resolved basically by the two conflict of law rules: the rule of nationality (lex patriae) and the rule of domicile (lex domicilii). Nationality is understood in the customary meaning of the word as the person's citizenship. The rule of domicile is used in cases where a person's citizenship cannot be determined or is nonexistant. In the socialist countries, the status and capacity of a physical person are generally governed by the lex patriae conflict rule. A question of legal capacity is likely to arise in connection with the legal age of majority, which invariably includes full legal capacity. In the socialist countries this age is 18.

In Czechoslovakia the legal capacity of a foreigner is determined first by the law of his nationality. 78/ If he lacks this capacity under the law of his country, he may undertake legal acts within Czechoslovakia, if he holds such capacity under Czechoslovak law. The Czechoslovak code does not cover

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77/ Arts. 86-101 and art. 92, Y.

78/ Art. 3 (1), Cz.

legal ability to enter into obligations based on bills of exchange and checks. A special law is concerned with this matter and includes the legal capacity of a corporation. In questions of jurisdiction, Czechoslovak courts are competent in matters regarding the legal personality of Czechoslovak citizens wherever they may reside. 79/

In the Hungarian code, special rules define the law governing the personal status of possible subjects (physical and legal entities) of legal relationships in the fields of civil, family, and labor law. The code comprises the legal capacity, disposing capacity, and generally speaking, all rights related to personal status. 80/ The code also provides that the personal law of the individual is determined by his nationality. 81/ The personal law of the juristic person is the law of the state in whose territory the legal entity was registered. 82/ The legal capacity, economic qualification, personal legal rights, and membership relations of the legal entity is governed by its personal law. The principle of the place of incorporation is in harmony with the provisions of civil law, both in the Hungarian legal system and in that of the other East European socialist countries.

79/ Art. 42 (1-2), Cz.

80/ Art. 10, H.

81/ Art. 11 (1), H.

82/ Art. 18 (1-2), H.

Poland's code specifies that the capacity to enter into legal transactions as a physical person is suject to his law of nationality. That of the juridical person is subject to the law of the state in which the entity has its seat. Its legal transactions within the scope of its business activities are governed by the law of the state in which the business is physically situated. 83/

Under the East German code, "the competence of a person to acquire rights and to incur obligations by his own act is to be determined by the law of the state of which he is a national." 84/ Foreigners and stateless persons in East Germany may act if the prerequisites for competency established by the law of East Germany are met. The legal capacity of an enterprise, including its recognition as a legal entity, is determined by the law of the state which controls its legal status. 85/

Under the Yugoslav statute, 86/ citizenship of legal entities is determined by the law of the state at the time the body was established. If it has a domicile in a state other than in the one where it was originally founded and the legal entity is in possession of citizenship of that state, it will be considered a juristic person of that state.

83/ Art. 9, P.

84/ Art. 6 (1), GDR.

85/ Art. 8, GDR.

86/ Art. 17, Y.

C. Rules on property

In the socialistic countries the basic rule of conflict of laws regarding property is the lex rei sitae, e.g., the law of the place where the object is located governs. This rule applies with regard to:

--establishing ownership and possession of movables and immovables;

--deciding the content of real rights and possession;

--acquisition, transfer and termination of such;

--protection of ownership and possession; and

--maintaining records (land registry).

It is well known that the ownership of land and real estate is often within the state's monopoly in these countries. Only family houses up to a certain size may be owned by individual citizens and then ownership is usually restricted to that land occupied by the house proper. The profound changes in the economic structure of these countries also affected movable property so that the lex rei sitae is applicable to a great extent to this type of ownership. The lex loci contractus governs in regard to the form of the contract of sale, and the lex rei sitae governs in matters concerning title.

Thus, unless otherwise specified in the statute, under the codes of Czechoslovakia (arts. 5-8), East Germany (arts. 9-13), Hungary (arts. 21-23), Poland (art. 24), and Yugoslavia (art. 18), the law of the country where the goods are located is

applicable. No distinction is made between movables and immovables. An exception to this rule is allowed in the inheritance of movables where the law of the decedent's citizenship at the time of his death is applicable.

The applicable law with regard to goods in transit (res in transitu), in Czechoslovakia (art. 6), East Germany (art. 10), Hungary (art. 23-2), and Yugoslavia (art. 18-2;) is that of the country of destination, lex loci expeditionis. The Polish code is silent on this issue.

As a rule, within Eastern Europe, the creation, maintenance, and termination of property rights with respect to registered vessels and aircraft are governed by the law of the state under whose flag or markings the vehicle operates. 87/ The East German code expressly states that "title and other rights in vessels and aircraft are governed by the law of the state in which the vessel or aircraft is registered." 88/

In the rest of the East European countries, without codified statutes on private international law, the general legal norms throughout their legislation do not provide a direct answer and specific conflict of laws rules involving property. But as is the case with Bulgaria, the Law on Ownership (art. 112) and the Civil Procedure Code prescribe the application of lex rei sitae with reference to legal contracts of immovable and movable property.

87/ Art. 23 (1), H.; art. 18 (3), Y.

88/ Art. 11 (1), GDR.

D. Rules on contracts

In those socialist countries that have codified private international law, parties to a contract are free to choose the particular law that will govern all aspects of the contract if the law concerns their obligations. The parties may select any existing legal order, and they are not limited in their choice in any way. They may select the applicable law either expressly or by implication. Thus, the principle of free choice of law by the parties to a contract is followed. 89/

Under the Czechoslovak code, if the parties fail to choose the applicable law, then the contract will be governed by the law "conducive to a reasonable settlement of the matter." 90/ Within the framework of reasonableness, the law itself determines the applicable law for every kind of contract. 91/ Likewise, in Hungary 92/ and Yugoslavia, 93/ in the absence of a selected law, the codes provide for the application of a set of conflict of laws rules based on domicile, habitual residence, business headquarters, or plant location depending on the type of contract. Furthermore, in Yugoslavia contracts related exclusively to immovables are controlled by the law of the state

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89/ Art. 9, Cz.; art. 12 (1), GDR; art. 24, H.: art. 25 (1), P.; art. 19, Y.

90/ Art. 10 (1), Cz.

91/ Supra note 1, Glos, at 31.

92/ Art. 25, H.

93/ Art. 20, Y.

in which the immovables are located. 94/ Similarly, under Polish law, 95/ if immovable property is involved, then lex rei sitae prevails. If no choice is made, then the law of the state in which the parties had their residence or domicile at the time the contract was made governs. This rule, however, does not apply if the obligations concern immovable property. In East Germany, for instance, a similar situation exists; in the absence of a contractual choice of applicable law, contracts concerning title and other rights in land and buildings situated in the Republic are governed exclusively by East German law. 96/ In the absence of a contractual choice of the applicable law by the parties to an international commercial transaction, contracts are governed by the law prevailing at the principal place of business of the various types of contracting partners. The laws of Czechoslovakia, Hungary, and Poland follow the same general rule.

With regard to the form of contracts, both the East German 97/ and Polish 98/ statutes prescribe that the law of the state which governs the legal relationship will be applied.

94/ Art. 21, Y.

95/ Art. 25 (2), P.

96/ Art. 12 (3), GDR.

97/ Art. 16, GDR.

98/ Art. 12, P.

E. Rules on family law

The specific rules designated to regulate family relations in cases containing a foreign element are dealt with in all the codes on private international law in Eastern Europe. The connecting factor is the principle of nationality (lex patriae) with various departures in instances where other conflict of law rules may be involved.

1. Relations between spouses

a. Marriage

The faculty and substantive prerequisites for a valid marriage are determined by the law of the country where each of the spouses is a citizen. 99/ The Hungarian code prescribes that the substantive prerequisites for a valid marriage are governed by the personal law common to the parties. If their personal law is different at the time of their marriage, the marriage will be considered valid only if the substantive legal prerequisites of the personal law of both parties are met. 100/ Under the East German code, however, a marriage between citizens of East Germany and another country must be approved by the East German authorities, if the marriage is concluded outside the Republic. 101/

99/ Art. 19, Cz.; art. 18 (1), GDR.; art. 37 (1), H.; art. 14, P.; art. 32 (1), Y.

100/ Art. 31 (1), second sentence, H.

101/ Art. 18 (3), GDR.

The formal requirements for a marriage are governed by those laws of the place which were in effect when the marriage was concluded (locus regit actum). 102/ However, if the marriage is entered into outside its jurisdiction, it is sufficient that the parties comply with the form prescribed by their individual national laws. The Czechoslovak code makes the civil form of concluding a marriage obligatory if the marriage of a Czechoslovak citizen is to be considered valid. 103/

b. Relations between husband and wife

The personal relations as well as property matters (rights) of the husband and wife are subject to their common natural law at the relevant time. 104/ If the spouses are nationals of different states, then the law of the state where they have their common residence, 105/ or their last common personal law, 106/ or their last common domicile prevails. 107/ If the

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102/ Art. 20 (1), Cz.; art. 18 (2), GDR.; art. 31 (2), H.; art. 15 (1), P.; and art. 32 (1), Y.

103/ Art. 20 (2), Cz.

104/ Art. 21, Cz.; art. 19, GDR.; art. 39 (1), H.; art. 17, P.; art. 36 (1), Y.

105/ Art. 39 (4), H.; art. 17 (3), P.; art. 36 (2), Y.

106/ Art. 39 (2), H.

107/ Art. 39 (2), H.; art. 36 (3), Y.

parties can claim none of these, the foreign court has competence. 108/ If the parties are in Czechoslovakia, then Czechoslovak law is applicable. 109/ If it is impossible to determine the proper law in a case arising in Yugoslavia, then Yugoslav law applies. 110/

c. Dissolution and annulment of a marriage

Divorce and annulment of a marriage are governed by the common national law of the spouses at the time when the divorce proceedings are initiated. 111/ If the spouses are citizens of different countries, in Czechoslovakia the law of this country must be applied. 112/ The situation is similar in East Germany 113/ where the last common personal law shall control the divorce, 114/ but if one of the parties, for instance, is Hungarian, then Hungarian law is applicable. In other cases, the law of the state where the spouses had their last common domicile is applied. 115/ If no common domicile can be claimed or established, then lex fori prevails. 116/ Furthermore, the Hungarian code

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108/ Art. 29 (4), H.

109/ Art. 21, second sentence, Cz.

110/ Art. 36 (4), Y.

111/ Art. 22, Cz.; art. 20 (1), GDR.; art. 40 (1), H.; art. 18, P.; art. 35 (1), Y.

112/ Art. 22 (1), Cz.

113/ Art. 21 (1), GDR.

114/ Art. 40 (2), H.

115/ The same is also true in Poland, art. 18.

116/ Art. 40 (3), H.

contains several provisions regarding the application of foreign law in cases regarding the dissolution of a marriage. 117/ In Poland, if both spouses have their domicile in the same state, Polish law must apply. 118/

All the codes in force in Eastern Europe treat the annulment of a marriage in a similar manner. 119/

2. Relations between parents and children

Legal relations between a parent and a child are subject to the nationality law the child acquired at his birth. 120/ If they have different citizenships the law of the state in which they reside would be applicable in Yugoslavia. 121/

a. Paternity

Determination for the ascertainment or denial of paternity is governed by the law of the state whose citizenship the child acquired by birth. 122/ Under the Czechoslovak code, if the child lives in Czechoslovakia, paternity may be determined or denied under Czechoslovak law if it is in the child's interest. 123/ Furthermore, admission of paternity shall be accepted

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117/ Art. 41, H.

118/ Art. 18, P.

119/ Arts. 14 and 15, P.; art. 22 (3), Cz.; art. 18, GDR.; art. 37 (4), H.; art. 35 (2), Y.

120/ Art. 23 (1), Cz.; art. 21, GDR.; art. 42, H.; art. 19 (1), P.; art. 40 (1), Y.

121/ Art. 40 (2), Y.

122/ Art. 23 (1), Cz.; art. 21, GDR.; art. 42 (1), H.; art. 19 (2), P.; art. 41, Y.

123/ Art. 23 (2), Cz.

as valid if it was made in conformity with the laws of the state where such admission was declared. 124/ In Hungary the paternal recognition of a child is governed by the child's personal law at the time paternal recognition was made. 125/ In Poland the recognition of a child is subject to the law of the state of which the child was a citizen at the time paternity was recognized. 126/

In cases regarding legitimation, the Yugoslav code specifies that valid is the law of the state of which the parents are citizens or that of the parent who undertakes the legitimation. 127/

b. Education and support

In Poland claims of maintenance between those related by blood or marriage are subject to the national law of the person entitled to maintenance. 128/ In Hungary the personal law of the recipient of the support will determine the conditions of support, size of the contribution, and the method of meeting support obligations made by other relations. 129/ The legal relationships between parents and children in East Germany are

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124/ Art. 23 (3), Cz.

125/ Art. 42 (2), H.

126/ Art. 12 (2), P.

127/ Art. 43 (1), Y.

128/ Art. 20, P.

129/ Art. 47, H.

controlled by the law of the state of which the child is a national. 130/ In Czechoslovakia such relations, including the upbringing and maintenance, are governed by the law of the state of which the child is a citizen. 131/

Yugoslav law is more complicated on this issue. 132/ Generally the state of which the parents are citizens is applicable. However, if the parents are from different states, the law of the residence of both parents governs. If the parties do not have residence in the same state, the law of Yugoslavia takes precedence.

c. Claims by parents for support from their children

In Czechoslovakia claims of parents against their children for maintenance are governed by the law of the state of which the parents are citizens. 133/ In Yugoslavia such claims made by blood relatives (except parents and children) are governed by the law of the relative's state. 134/ A similar situation exists in Hungary where support due from relatives is governed by the personal law of the recipient. 135/

130/ Art. 22, GDR.

131/ Art. 24, Cz.

132/ Art. 40, Y.

133/ Art. 24 (2), Cz.

134/ Art. 42, Y.

135/ Art. 15, H.

d. Claims of an unmarried mother against the father

The Czechoslovak and Polish codes include special provisions dealing with claims filed by unmarried mothers against the father of a child born out of wedlock. Such claims in Poland are subject to the national law of the mother at the time her child was born. 136/ If a mother who is an alien resides in Czechoslovakia and the child's father is a Czechoslovak citizen, the mother's claim is governed by Czechoslovak law. 137/

e. Adoption

Adoption in Poland is subject to the national law of the adopter; however, adoption cannot take place without compliance with the provisions of the national law of the person to be adopted. 138/ In Hungary the prerequisites for adoption are governed by the joint observance of the personal law of the adoptive parents and the adopted person at the time of adoption. A citizen of Hungary can adopt a non-Hungarian only with the permission of the Hungarian Public Guardianship Authority. A non-Hungarian citizen must also obtain permission to adopt through this same agency. The same provisions exist in cases regarding differences in the personal law of the adoptive parents. 139/

136/ Art. 21, P.

137/ Art. 26 (1), Cz.

138/ Art. 22, P.

139/ Arts. 43-44, H.

Adoption in East Germany as well as its effects and revocation of an adoption are governed by the law of the te of which the adoptive parent is a national at the time of adoption or revocation. If the parents are of different ionalities, the law of the German Democratic Republic is ap- ed. The adoption of a child who is a citizen of the Republic a national from another state requires approval by the etent East German authorities. 140/

In Czechoslovakia, as in Poland, if the adopting par- are citizens of different states, the conditions set for ption by the laws of both states must be met. 141/ The law of state where the child has citizenship will be considered there is a question whether the consent of the child or a te organ must first be obtained. 142/ In Yugoslavia in cases adoption or termination of adoption valid is the law of the te of the adopted person and adopting parents. Also, the of adoption is subject to the law of the place where the ption is being conducted. 143/

3. Guardianship and curatorship

All the codes on private international law in the t European countries specify that guardianship, the prereq- ites for the institution, and termination of a guardianship subject to the national law of the state of the person for

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/ Art. 23, GDR.

/ Art. 26, Cz.

/ Art. 27, Cz.

/ Art. 44, Y.

whom a guardian is to be appointed, either as a ward or a minor child. 144/ The extent of the guardian's obligation to exercise his function and to accept and perform his duties as a guardian is determined by the guardian's personal law. 145/ The legal relations between the guardian and the minor are governed by the law of the state where the guardianship court or authority is located or of the country of which the ward is a citizen. 146/

The codes of East Germany, Hungary, and Poland contain provisions concerning guardianship which are also applied to situations requiring curatorship. 147/

F. Rules on succession

The rule of conflict of laws related to succession as specifically expressed in all codes on private international law in the East European states is that of the personal law of the deceased-decedent-testator at the time of his death, that is, the law of the state whose citizen the decedent was at the time of his death, lex patriae. Lex patriae also governs all questions on succession, including the capacity to inherit, testamentary and intestate succession, and any incidental questions. 148/

144/ Arts. 28 and 31, Cz.; art. 24, GDR.; art. 48, H.; art 23, P.; art. 15 (1), Y.

145/ Art. 29, Cz.

146/ Art. 30, Cz.

147/ Art. 24, GDR.; art. 49, H.; art. 23, P.

148/ Art. 17, Cz.; art. 25, GDR.; art. 36, H.; art. 34, P.; art. 30, Y.

The Czechoslovak and Hungarian codes apply the personal law to the relations of succession for both movable and immovable assets included in the estate. The capacity to make or abolish a testament as well as its effects or defects of will and its expression is governed by the personal law of the testator. The validity of a will or any other legal transaction made in contemplation of death is governed by the national law of the testator at the time the relevant disposition is made.

The form of the will in Czechoslovakia is governed by the law of the decedent's nationality at the time he made his will; however, the law of the state on whose territory the testament was written is also admissible. The same is true in both Hungary and Poland. 149/ The same rule also applies as to the form used to abolish a testament. 150/ The Hungarian code prescribes that the writing or revocation of a will shall be formally valid if it is acceptable under Hungarian law at the place and the time it was signed or revoked. 151/ Furthermore, under the East German code the rights to succession that affect title and other rights to land and buildings situated in East German territory are determined by the law of the Democratic Republic. 152/ In Czechoslovakia, as in the other East European countries, land and buildings may be owned only by the state. 153/

149/ Art. 18 (2), Cz.; art. 36 (2), H.; art. 35, P.

150/ Art. 18, Cz.

151/ Art. 36 (2), H.

152/ Art. 25 (2), GDR.

153/ Supra note 1, Glos, at 12-13.

In East Germany the capacity to make or revoke testamentary dispositions and various other documents related to succession are governed by the law of the state of the decedent's habitual residence at the time the will was made. 154/

G. Rules on labor law

Problems of the law applicable to the labor relations with an international element 155/ do occur in the socialist countries, but such relations are possible on a different social-political, economic, and social level. As a rule not all the socialist countries include a special system of norms governing labor relations that have an international element. On the other hand, all the codes on private international law in the East bloc have special chapters that provide rules of conflict of laws in this field.

Labor relations in Czechoslovakia 156/ are based on labor contracts, and their contractual aspect is clearly related to the law of contracts. As a rule, the parties are given the authority to freely choose the law which governs the contract. Statutory choice is applied only in instances where no such agreement has been expressly made. Czechoslovak law goes a step further and provides that the labor contract is governed by the law of the country where the worker performs his duties.

154/ Art. 26, GDR.

155/ Supra note 7, at 335-339.

156/ Art. 16, Cz. and supra note 1, Glos, at 42 ff.

The East German code 157/ provides that employment relations are governed by the law of the state where the employer has his principal place of business. If the work place is situated in the state of the employer's habitual residence, the law of that state is applicable to the employment relationship. As to the form required, the above-described rules apply.

Unless they are otherwise ordered, labor relations in Hungary 158/ are governed by the law of the state in which the work is performed. If work sites are in several states, then the personal law of the employer is applied.

Under the Polish code, 159/ the parties involved in labor relations have the right to a law of their choice, if such a law can be connected to their relations. If they do not choose a governing law, then the law of the state in which the parties have their domicile or residence at the time of the relations applies. In a case where they do not have a domicile or place of business, the law of the state in which the work is performed governs.

The Yugoslav statute contains a single provision on this matter which reads: "In a service contract the applicable law is the law of the place of the one who renders the service at the time he received the offer." 160/

157/ Art. 27, GDR.

158/ Arts. 51 and 52, H.

159/ Arts. 32 and 33, P.

160/ Art. 20, No. 9, Y.

The validity of the employment contract, its substantive and formal prerequisite, the consequences of an invalid employment contract as well as the content and termination of an employment relation are governed by the law controlling employment relations: East Germany (art. 27, para. 3); Hungary (art. 53); Poland (art. 33, para. 1).

With regard to conditions of employment of transport workers (rail and highway), the law of the seat of the transport enterprise applies. Included are river navigation, air transport, and the law of aircraft registry. Maritime transport is governed by the law of the flag or markings under which the vessel operates (Czechoslovakia, art. 16, para. 2; Hungary, art. 52 (3)). The same is true in cases involving air or water transportation. The Polish code is silent on this point.

Some of the codes, the Polish and Czechoslovak in particular, allow a limited application of the principle lex voluntaris. In other cases either the domicile of the parties, the seat of the employer, or the law of the place where the work is to be done is decisive.

H. Rules on copyright and inventions

International protection of intellectual property 161/ is regulated by a network of conventions both in the fields of copyright and the protection of industrial property rights. The countries of Eastern Europe are parties to many of these conventions.

161/ Supra note 7, at 239-256.

Additional regulations are provided by statutes within their municipal legislation, and these cover relations with an international element and the problems which arise from them.

Among the codes on private international law adopted by the socialist countries, only that of Hungary devotes an entire chapter to copyrights and industrial property rights. 162/ The regulations of Chapter III of the Law of Intellectual Property are applied in relations with countries where Hungary has not concluded either bilateral or multilateral agreements. Under the mentioned provisions, copyrights are governed by the law of the state in which protection is claimed. The interests of an inventor or his successor are protected by the law of the state in which the patent was issued or in which the patent application was filed. This rule is applicable, reasonably, to the protection of other industrial property rights including, for example, industrial designs and trademarks. In both instances, the principle of territoriality prevails.

The Yugoslav statute also contains a provision on intellectual property which specifies that the law of the place where the author resided at the time he received the offer is valid in copyright matters. 163/

I. Rules on international transport

Legal relations with an international element involving the transportation of passengers, luggage, and goods from

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162/ Arts. 19-20, H.

163/ Art. 20, No. 14, Y.

one state to another directly or by transit crossing the territory of one or more states are not expressly dealt with by any of the codified statutes on private international law of the East-European countries. Within the territorial limits of these countries, the state and its agencies such as the Ministry of Transport retains a monopoly on planning, coordinating, and controlling the development and use of its transport system. This principle applies to the sea, rivers, air, railway, and highway systems.

Conflicts of laws rules in the field of international transport are included in the numerous multi- and bilateral treaties on transport by air, river, and highway to which all of the East European countries are parties. Special domestic laws dealing with transport relations with an international element are also in effect.

J. Rules on limitation of claims

The codes of Czechoslovakia (art. 13), East Germany (art. 28), Hungary (art. 24 (4)), Poland (art. 13), and Yugoslavia (art. 8) contain provisions which directly deal with the problem of the limitation of claims.

The Polish text specifies that "a claim is subject to limitation in accordance with its proper law." The East German provision reads: "rights are subject to the statute of limitations of the state whose law applies to the underlining legal relationship." The Czechoslovak code states that "prescription of rights relating to obligations shall be governed by the same law as the obligations" and that "the setting off of claims

shall be governed, unless the requirement of a reasonable settlement of the legal relations implied otherwise, by the same law as the claim which is to be set off." The law of contract, the lex causae of Czechoslovakia, also governs the limitations of actions arising out of the contract. Although no period of limitation is given in the code, the time provided for in the Code of International Trade, three years as a general rule, is currently being applied. 164/

The Hungarian code specifies that "with respect to the applicable statute of limitations, it shall be governed by the law which otherwise controls the claim." 165/ The Yugoslav code states that "the law regulating the statute of limitation is competent for the content of legal action and activity." 166/

Three of the codified statutes on private international law of the countries in Eastern Europe also cover certain aspects of tortious acts. The Czechoslovak code contains a special provision dealing with damages in torts 167/ stating that claims for compensation will be governed by the law of the place where the damage occurred or the place where the fact substantiating the claims for compensation took place; thus, the basic

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164/ Supra note 2, at 37.

165/ Art. 30 (4), H.

166/ Art. 8, Y.

167/ Art. 15, Cz.

rule of lex loci delicti is followed. 168/ Furthermore, the Hungarian code devotes an entire chapter to liability for noncontractual damages and unjust enrichment. This is done specifically outside a contractual relationship. The liability is determined by the law in force at the time and place of the tortious act or omission. 169/ Similarly, the East German and Yugoslav does in referring to liability for injuries outside of contractual relationships, specifies that damages will be determined by the law of the state in which the injury occurred. 170/

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